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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,565	08/24/2004	Ralf Wiedemann	102792-333	3643
27389 7590 06/29/2007 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER DOUYON, LORNA M	
			ART UNIT 1751	PAPER NUMBER
			MAIL DATE 06/29/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/505,565

Applicant(s)

WIEDEMANN ET AL.

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-9 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 4, 2007 has been entered.

2. Claims 1, 3-9 and 15 are pending.

3. The rejection of claims 8-9 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.

***Specification***

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Rejections - 35 USC § 112***

5. Claims 6-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 lacks support for "the material" (see line 2) with respect to claim 1.

Claim 7 lacks support for "the water-soluble material" (see line 2) with respect to claim 5.

***Claim Rejections - 35 USC § 102/103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 3-8 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pfeiffer et al. (US Patent No. 6,492,312), hereinafter "Pfeiffer".

Pfeiffer teaches a water soluble sachet comprising a detergent composition a detergent composition having a discrete particle that enhances cleaning in a dishwashing machine (see abstract), wherein the dishwashing composition is a gel which comprises discrete particles having an approximate diameter from about 100 to about 5000 microns (5mm) (see col. 2, lines 60-63) and having a viscosity from about 100 to about 45,000 cps (about 100 to about 45,000 mPas) (see col. 4, lines 56-61). The discrete particles may be a wax-encapsulated bleach (see col. 9, line 17+), which inherently have a density lower than the density of the composition, and at least one solid should float on the outer surface of the liquid. Suitable materials for the water soluble sachet include polyvinyl alcohol (see col. 3, lines 48-65). The dishwashing composition should inherently have a dispersion/dissolution time as those recited, considering the same liquid have been utilized. Hence, Pfeiffer anticipates the claims.

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Even if the teachings of Pfeiffer are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the density of the discrete particles, for example, the wax-encapsulated bleach to have a density lower than the density of the dishwashing composition and to have at least one of the wax-encapsulated bleach particle to float on the outer surface of the liquid considering that the particles are described as discrete and would have dispersed/suspended/floated in the composition.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer as applied to the above claims, and further in view of Dasque et al. (WO 01/60966), hereinafter "Dasque".

Pfeiffer teaches the features as described above. Pfeiffer, however, fails to disclose the water soluble sachet comprising a detergent composition for use in a laundry washing machine.

Dasque, an analogous art, teaches that a detergent composition in a water-soluble pouch comprising similar ingredients (see abstract) are prepared as laundry or dishwashing compositions (see page 21, lines 29-32), hence useful for laundry or dishwashing machines.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the product of Pfeiffer not only for dishwashing purposes but also for laundry washing because it is known from Dasque that a similar product is useful for both laundry and dishwashing applications.

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9. Claims 1, 3-9 and 15 are rejected under 35 U.S.C. 102(e) as anticipated by Becks et al. (WO 02/057402).

Becks teaches a liquid composition comprising a transparent or translucent liquid medium and solid particles contained within the liquid medium wherein the composition is contained within a pouch made from a transparent or translucent water-soluble material, so that the individual solid particles are visible from outside of the pouch, the solid particles having a mean geometric diameter of between 0.5mm and 12 mm (see abstract). One of the advantages of the invention of Becks is that the solid particles do not necessarily need to be stably suspended in the liquid medium, but rather the solid particles may sink or float in the liquid medium (see page 2, last paragraph). The liquid composition can have any viscosity and the viscosity may be controlled, if desired, by using various viscosity modifiers (see page 7, lines 10-14). The composition should inherently have a dissolution time as those recited because same components have been utilized. The compositions are typically laundry or dishwashing compositions (see page 7, lines 19-21). In Example 2b, Becks teaches a low moisture liquid detergent composition with one 10 mm sphere/capsule in a pouch of soluble polyvinyl alcohol film, wherein the spherical particle of sample b is less dense than the detergent and float in the detergent in the pouch and rapidly dissolve when the pouch is added to the wash (see entire page 26). Becks teaches the limitations of the instant claims. Hence, Becks anticipates the claims.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 6 of copending Application No. 10/505,624. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar packaged detergent compositions comprising a liquid or fluid phase a solid having similar sizes and overlapping densities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Response to Arguments***

12. Applicants' arguments filed June 4, 2007 have been fully considered but they are not persuasive.

With respect to the anticipation rejection based upon Pfeiffer, Applicants argue that the essence of the disclosure of Pfeiffer as understood by one skilled in the art is a composition with many small particles distributed throughout the liquid, whereas the present invention concerns a particle floating at the top of the liquid as set forth in the amended claim.

The Examiner respectfully disagrees with the above arguments because, the present amendment only requires "one solid is floating on the outer surface of at least one liquid". Considering that the particles are distributed throughout the liquid, there should at least one solid that would inherently be floating on the surface of the liquid.

With respect to the obviousness rejection based upon Pfeiffer, Applicants argue that Pfeiffer, as discussed above, does not specifically state that the particles float on top of the liquid and indeed one skilled in the art would not consider Pfeiffer to teach of a particle on top of the liquid in that it teaches of particles known in the art to be smaller sized particles dispersed in the liquid.

The Examiner respectfully disagrees with the above arguments because it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect at least one of the wax-encapsulated bleach particle of Pfeiffer whose particle size overlaps those recited to float on top of the liquid composition,

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considering that the particles are described as discrete, hence would have dispersed/suspended/floated in the composition.

With respect to the rejection of claim 9 based upon Pfeiffer in view of Dasque, Applicant argues that this claim is dependent from claim 1, and as discussed above, claim 1 is not obvious over Pfeiffer, and such a method of washing laundry is not obvious over Pfeiffer in view of Dasque.

The above response to Pfeiffer applies here as well. Hence, the combination of Pfeiffer with Dasque is maintained.

With respect to the provisional obviousness type double patenting rejection, Applicants argue that a terminal disclaimer will be submitted at the appropriate time if necessary at the conclusion of prosecution of this application.

The provisional obviousness type double patenting rejection is maintained until such time Applicants will submit a timely terminal disclaimer.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M. Douyon/  
Primary Examiner  
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